

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19th JUDICIAL CIRCUIT

SHERRI TALBOTT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 21AC-CC00396
)	
MISSOURI SECRETARY OF STATE)	
JOHN ASHCROFT,)	
)	
Defendant,)	
)	
KEEP THE PROMISE MISSOURI,)	
)	
Intervenor.)	

FINAL ORDER AND JUDGMENT

This case concerns the Secretary of State's certification of a ballot title for Initiative Petition 2022-057 (the "Initiative"). On January 20, 2022, the Court held a bench trial on stipulated facts and exhibits. Plaintiff Sherri Talbott was represented by Loretta Haggard of Schuchat, Cook & Werner, Defendant Secretary of State John Ashcroft was represented by Jason Lewis of the Attorney General's Office, and Intervenor Keep the Promise Missouri was represented by Charles Hatfield and Alixandra Cossette of Stinson, LLP. Based on the stipulated facts and exhibits, the arguments presented, and the applicable law, the Court makes the following findings of facts and conclusions of law and enters its Final Order and Judgment.

I. Findings of Fact

Plaintiff Sherri Talbott is a citizen of the State of Missouri and the proponent of the Initiative. Defendant Secretary of State John Ashcroft is the duly elected and acting Secretary of State of Missouri (the "Secretary"). Intervenor Keep the Promise Missouri is a campaign committee formed in

Missouri and registered with the Missouri Ethics Commission. It was formed in order to oppose the Initiative.

On August 25, 2021, Plaintiff submitted the Initiative on behalf of Taxpayers for Accountability, a political action committee formed in Missouri and registered with the Missouri Ethics Commission. The Secretary subsequently denominated the Initiative as IP 2022-057. The Initiative seeks to amend Article IX of the Missouri Constitution.

On October 6, 2021, the Secretary certified an official ballot title for the measure, which contains the following summary statement:

Do you want to amend the Missouri Constitution to:

- remove opportunities for disabled, special needs, and those students who are economically disadvantaged by eliminating public funding to non-public elementary and secondary schools through vouchers, tax credits, tuition subsidies and other funding for student attendance and staff employment;
- limit the influence, power and authority of parents, community members and local school boards by requiring the state board of education to implement and supervise a uniform method of evaluation and accreditation for all public elementary and secondary schools who receive public funding including charter schools?

Plaintiff filed her Petition on October 15, 2021. Accordingly, Plaintiff filed this lawsuit within 10 days of the Secretary's certification of the ballot title for the Initiative. This case is therefore timely. Plaintiff alleged the Secretary violated § 116.190 RSMo by certifying a ballot title summary statement for the Initiative that is insufficient, unfair, misleading, and intentionally argumentative.

II. Conclusions of Law

The Secretary is required to prepare an official ballot title for initiative petitions. The ballot title “shall be a concise statement not exceeding one hundred words. This statement shall be in the form of a question using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.” § 116.334.1, RSMo. Any citizen dissatisfied with the Secretary’s ballot title may bring an action asserting that the summary statement “is insufficient or unfair” and “request a different summary statement portion of the official ballot title.” § 116.190.3, RSMo.

These standards are well-trodden. “[I]nsufficient means inadequate; especially lacking adequate power, capacity, or competence and unfair means to be marked by injustice, partiality, or deception.” *Brown v. Carnahan*, 370 S.W.3d 637, 653-54 (Mo. banc 2012) (internal quotations omitted). “To create [] a summary statement that is not insufficient or unfair, the summary statement must be adequate and state the consequences of the initiative without bias, prejudice, deception, or favoritism.” *Id.* at 654.

“The language used should fairly and impartially summarize the purposes of the measure so that voters will not be deceived or misled.” *Id.* (internal quotations and alterations omitted). And the summary statement “should accurately reflect the legal and probable effects of the proposed initiative.” *Id.* The purpose of these requirements is “(1) to promote an informed understanding by the people of the probable effects of the proposed amendment, [and] (2) to prevent a self-serving faction from imposing its will upon the people without their full realization of the effects of the amendment.” *Id.* (internal quotations omitted).

The purpose of a ballot title is “to give[] voters a sufficient idea of what the proposed amendment would accomplish, without language is intentionally unfair or misleading. The idea is to advise the citizen what the proposal is about.”

Fitzpatrick v. Ashcroft, WD85060, 2022 WL 120234 *23 (Mo. App. Jan. 13, 2022)(quoting *Pippens v. Ashcroft*, 606 S.W.3d 689, 702 (Mo. App. 2020).

With these principles in mind, the Court proceeds to evaluate the fairness and sufficiency of the Secretary's ballot title summary statement for Initiative Petition 2022-057.

III. Overview of Laws Related to Elementary and Secondary Schools

Before turning to the substance of this ballot title, it is necessary to provide a basic overview of the law related to elementary and secondary schools in Missouri. The Missouri Constitution requires that the General Assembly “establish and maintain free public schools for the instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.” Mo. const. art. IX, § 1(a). In order to effectuate this obligation, the General Assembly first established a system of school districts, governed by school boards which are elected by the members of the local community. *See* § 160.021, RSMo; § 162.291, RSMo; § 162.459, RSMo; § 162.471, RSMo; § 162.581, RSMo.

The General Assembly also determined that students in certain school districts required additional public school options. The general assembly established charter public schools—“independent public schools” governed by non-profit boards of directors. *See* § § 160.400-160.425, RSMo. So charter public schools could meet the needs of their local communities, the legislature exempted charter public schools “from all laws and rules relating to schools, governing boards and school districts” unless specifically made applicable. § 160.405.4(3), RSMo. This means that charter public schools are generally exempt from requirements put in place by the State Board of Education.

The State Board of Education has certain statutory authority with regard to public schools. The Board classifies “the public schools of state” and establishes “requirements for the schools of each class, and formulates rules governing the inspection and accreditation of schools preparatory to classification.” § 161.092(9), RSMo. And the accreditation of schools is in part based on student

performance. *See* 5 CSR 20-100.125. While the State Board has authority to create a statewide assessment system, such system is required to provide “*maximum flexibility* for local school districts to determine the degree to which students in the public schools of the state are proficient in the knowledge, skills, and competencies adopted” by the State Board. § 160.518.1, RSMo (emphasis added). In other words, the General Assembly recognized the need for local control of public schools.

In 2021, the General Assembly also responded to the needs of students by establishing the Missouri Empowerment Scholarship Account (“ESA”) Program. *See* § § 135.712-135.719, RSMo; 166.700-166.720, RSMo. Its purpose is to provide educational options for disabled students, students with special needs, and economically disadvantaged students in certain parts of the State. For example, eligible students may use ESA funding to attend a private school that better meets their individual needs than their local public school.

What is clear is that the intent of the educational infrastructure in Missouri is to provide students, parents, and local communities with guidelines, not mandates, for how to operate schools along with an array of choices for educational opportunities. Keeping this in mind, the Court now turns to the fairness and sufficiency of the ballot title at issue.

IV. The First Bullet Point of the Secretary’s Summary Statement is Fair and Sufficient

The first bullet point asks whether voters want to amend the Missouri Constitution “to remove opportunities for disabled, special needs, and those students who are economically disadvantaged by eliminating public funding to non-public elementary and secondary schools through vouchers, tax credits, tuition subsidies and other funding for student attendance and staff employment.” This fairly and sufficiently describes the probable effects of the proposed new language in Section 3(a) of the Initiative. The Initiative states in part that “[i]n order to effectuate the purposes of Section 1(a) of this article, and

to preserve the available general revenue for the education of students in public schools, the state shall not appropriate or pay public funds for any program, nor authorize or implement vouchers or tax credits, with the purpose or effect of providing tuition subsidies or subsidizing other costs of student attendance or employment at non-public elementary or secondary schools.” All parties agreed that the effect of this language will be to eliminate the recently enacted Missouri Empowerment Scholarship Account Program. And the Court disagrees with Plaintiff’s assertion that a central feature of Section 3(a) is to preserve general revenue for public schools. Despite the language Plaintiff points to in the Initiative, the *effect* of the measure is to eliminate the ESA program. *See Boevig v. Kander*, 493 S.W.3d 865, 873-74 (Mo. App. 2016)(The summary statement “should accurately reflect the legal and probable effects of the proposed initiative.”).

Because the ESA Program provides funding for disabled, special needs, and economically disadvantaged students to attend non-public elementary and secondary schools and the measure would eliminate the ESA program, the first bullet point of the summary statement gives voters “a meaningful sense of what the proposed amendment would accomplish.” *See Pippens v. Ashcroft*, 606 S.W.3d 689, 707 (Mo. App. 2020). The first bullet point is fair and sufficient.

V. The Second Bullet Point of the Secretary’s Summary Statement Requires Minor Revisions

The measure proposes to add the following new language to the Constitution: “[t]he board shall implement and supervise a uniform method of evaluation and accreditation that shall apply to all public elementary and secondary schools receiving their funding under Section 3(a) of this Article.” In summarizing this language, the second bullet point of the summary statement asks whether voters want to amend the Constitution to “limit the influence, power and authority of parents, community members and local school boards by requiring the state board of education to implement and supervise a uniform

method of evaluation and accreditation for all public elementary and secondary schools who receive public funding including charter schools.” This, as the summary statement describes, will expand the power of the State Board of Education. As discussed above, right now the State Board is directed by statute to allow local schools to have flexibility. This statutory directive will no longer be mandatory if State Board authority is enshrined in the Constitution. This is a dramatic expansion of the State Board’s power and the Secretary appropriately concluded voters must be apprised that this is an effect of the measure. See *Fitzpatrick v. Ashcroft*, No. WD85060, 2022 WL 120234 *23 (Mo. App. Jan. 13, 2022).

However, the Court agrees with Plaintiff that the Secretary went too far in describing the effect of the measure in the summary statement. Other than in the case of charter schools, it is speculative as to if and how the measure will limit the influence of parents, community members and local school boards. At argument, no party was able to articulate how this limitation would manifest itself with respect to parents and community members other than by affecting local school boards. The Court concludes that the second bullet point is not sufficient and does not accurately state the likely impact of the initiative. The Court, therefore, provides a revision to the second bullet point.

The Court is aware of the precedent relating to revisions of ballot title summary statements. This Court is directed that a summary statement must be re-written in a limited way. “[A]fter identifying deficiencies in a ballot summary, we will revise the existing summary while modifying the [existing] language in the most limited fashion possible.” *Pippens*, 606 S.W.3d at 712 (citing *Boeving*, 493 S.W.3d at 883); see also *Cures Without Cloning*, 259 S.W.3d, 76, 83 (Mo. App. 2008) (explaining that while circuit court was authorized to change a single word of summary statement, it “was not authorized to rewrite the entire summary statement”). Thus, this Court follows the direction of the Court of

Appeals and proposes a limited revision of the second bullet point of the summary statement.


IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

- The first bullet point of the summary statement is fair and sufficient;
- The second bullet point of the summary statement is unfair and insufficient;
- The Court hereby certifies the following revised summary statement:

Do you want to amend the Missouri Constitution to:

- remove opportunities for disabled, special needs, and those students who are economically disadvantaged by eliminating public funding to non-public elementary and secondary schools through vouchers, tax credits, tuition subsidies and other funding for student attendance and staff employment;
- expand the power of the state board of education over areas currently under the control of local school boards by requiring the state board to implement and supervise a uniform method of evaluation and accreditation for all public elementary and secondary schools who receive public funding including charter schools?
- All other relief requested in the Petition is hereby denied;
- Each party shall bear their own costs.

IT IS SO ORDERED.



The Honorable Jon E. Beetem, Circuit Judge